IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 262 OF 2006.

Smt.Jayshree Janardhan Patil. ... Appellant.

Versus.

Hasha Ambo Dalvi. ... Respondent.

Shri D.S.Mhaispurkar for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2006.

P.C.:

1. Heard Shri Mhaispurkar for the Appellant. The Appellant is the original Plaintiff. The suit was filed by the Appellant/Plaintiff in the year 1996 claiming declaration that the sale deeds executed in the years 1977 and 1983 were null and void. According to the case of the Appellant, the first sale deed is obtained by fraud by the Defendant. The first sale deed is signed by the parents of the Appellant and the Appellant. The pleading regarding the second sale deed of 1983 is that a fraud was played on the mother of the Appellant. The contention of the Appellant is that at the time of execution of both the sale deeds, she was a minor. The Trial Court dismissed the suit by holding that the plea of fraud is not established by the Appellant. The Appellate Court confirmed the decree of the trial Court.

2. The learned Advocate for the Appellant submitted that there was no independent evidence led by the Respondent to show that on the date of execution of the

sale deeds, the Appellant had attained majority. He submitted that there was no independent evidence to show that the consideration was paid under the second sale deed and the observation of the Appellate Court that attesting witness deposed about the payment of some consideration is factually incorrect. He submitted that the price which is shown in both the sale deeds clearly indicates that the sale deeds were obtained by fraud.

3. I have considered the submissions. So far as the burden to prove that the Appellant was a minor at the relevant time is concerned, it was on the Appellant. The Appellant tried to produce a birth extract in the evidence which was not accepted as the same was not proved. In this regard reference will have to be made to the plaint. In the plaint the Appellant has not disclosed her exact age in the cause title. It is merely stated that the Plaintiff is an adult. There are no material averments in the plaint disclosing the exact date of birth of the Appellant. The Appellant has not produced any documentary evidence to show that she was a minor on the date of execution of the sale deed.

4. The admitted position is that both the documents are executed by the parents of the Appellant. No independent witness has been examined by the Appellant to prove the alleged fraud and/or misrepresentation practiced by the Respondent. As stated earlier, the

suit is filed in the year 1986 for challenging the sale deeds executed in the years 1977 and 1983.

5. In view of the concurrent findings of fact which are based on appreciation of oral and documentary evidence on record, no interference is called for in the Second Appeal under section 100 of the Code of Civil Procedure, 1908. There is no merit in the Second Appeal. The same is dismissed.

Judge.